

REMARKS

Claims 1-28 were presented for examination, and claims 1-28 stand rejected. Thus, claims 1-28 are presently pending in this application, of which claims 1, 8, 11, 21, 27, and 28 are independent. No new matter has been added. Applicant submits that pending claims 1-28 are in condition for allowance. Applicant urges the Examiner to pass the claims to allowance in view of the amendments and remarks set forth below.

Oath/Declaration

The Examiner has indicated that the Declaration previously submitted is defective because only has the signature from one Inventor. Applicants had previously submitted three separate Declarations that collectively included all of the Inventors signatures. Applicants believe the Examiner may have only seen one of the three Declarations that included only one of the Inventors signatures. As such, another copy of all three executed declarations collectively including signatures from all the Inventors is being submitted herein with this Response.

Claim Rejections Under 35 U.S.C. §102**Rejection of claim 1-28 under 35 U.S.C. §102(b)**

Claims 1-28 stand rejected under 35 U.S.C. §102(b) as being anticipated by Simonson (U.S. Patent No. 5,643,263). Applicant respectfully traverses these rejections.

Summary of Simonson (U.S. Patent No. 5,643,263)

The Simonson reference is directed to a connection assembly for connecting a spinal implant rod to a spinal implant bolt. The connection assembly includes a rod connecting member having an aperture for receiving a portion of the rod and a bolt connecting member having an aperture for receiving a portion of the bolt. The rod connecting member and bolt connecting member are rotatably engaged to one another. A rod interface washer is positioned over a portion of the rod connecting member, and a bolt interface washer is positioned over a portion of the bolt connecting member. The rod interface washer and bolt interface washer are moveable in part between the rod connecting member and the bolt connecting member, the rod connecting washer being fixed against rotation relative to the rod

connecting member and the bolt interface washer being fixed against rotation relative to the bolt interface washer. A structure extendable into at least one of the apertures is provided, so as to urge one of the rod and bolt toward the other, and to cause the washers to be pressed together between the rod and the bolt, preventing rotation of the rod interface washer and rod connecting member relative to the bolt interface washer and bolt connecting member, and securing the rod to the bolt.

In order to anticipate a claim under 35 U.S.C. §102 a reference must disclose each and every element of the claim. Simonson fails to disclose each and every element of claims 1-28. As set forth above, Simonson is directed to a connection assembly for connecting a spinal rod to a *spinal implant bolt*. An implant bolt or screw is inserted into the vertebrae. A rod is connected to the inserted implant bolts to secure the rod in place. As such, the implant bolt is used as a fixation device for a rod. This is not what is being claimed in the present invention. The present invention is directed to connecting a first rod and *a second rod*.

Of claims 1-28, claims 1, 8, 14, 21, 27, and 28 are independent. Independent claims 1, 8, 14, 27, and 28 are device claims and independent claim 21 is a method claim. Every claim is directed to connecting a first rod to a second rod. This is a different problem being addressed than disclosed in the Simonson reference. Simonson is directed to securing a rod with a fixation device (an implant bolt). This is not the same as connecting two *rods*. It is well understood in the art that a fixation device such as a screw, implant bolt, or anchor is not the same as a rod. Indeed such fixation devices are used to secure rods in position. Simonson is directed to a means for securing a rod using an implant bolt. Nowhere in Simonson is there a disclosure or discussion of connecting a first *rod* to a second *rod*. As such, there is no disclosure of second bore hole for receiving a portion of the second rod as set forth in the independent claims. Therefore, Simonson fails to disclose each and every element of claims 1, 8, 14, 21, 27, and 28.

Claims 2-7, 9-13, 15-20, 22-26 depend either directly or indirectly from claims 1, 8, 14, and 21 respectively and as such incorporate each and every element of claims 1, 8, 14, and 21. As set forth above, Simonson fails to disclose each and every element of claims 1, 8, 14, and 21. Therefore Simonson fails to disclose each and every element of claims 2-7, 9-13, 15-20, 22-26.

In light of the foregoing amendments and remarks, Applicants respectfully submit that claims 1-28 are now allowable. Applicants therefore request the Examiner withdraw the rejections of claims 1-28 under 35 U.S.C. §102(b) and pass the claims to allowance.

Rejection of claim 1-28 under 35 U.S.C. §102(e)

Claims 1-28 stand rejected under 35 U.S.C. §102(e) as being anticipated by Taylor (U.S. Patent No. 6,685,705). Applicant respectfully traverses these rejections.

Summary of Taylor (U.S. Patent No. 6,685,705)

The Taylor reference is directed to a connection assembly between a spinal implant rod and a vertebral anchor. The connection assembly includes a spindle and a housing. The spindle has an aperture for receiving a spinal implant rod in a spinal implant system. A structure for urging the rod within the aperture, such as a setscrew, is provided through a suitable threaded opening in the spindle so as to be extendable into the aperture. The housing has an aperture for receiving a shaft or shank of a vertebral anchor of a spinal implant system. The housing also has an aperture for receiving a generally cylindrical projection portion of the spindle. A structure for urging the shank of the vertebral anchor against the projection portion, such as a setscrew, is provided through a suitable threaded opening in the housing.

As set forth above, in order to anticipate a claim under 35 U.S.C. §102 a reference must disclose each and every element of the claim. Taylor fails to disclose each and every element of claims 1-28. Similar to Simonson, Taylor is directed to a connection assembly for connecting a spinal rod to fixation device, in this case a *vertebral anchor*. As discussed above, this is not what is being claimed in the present invention. The present invention is directed to connecting a first rod and a *second rod*.

Of claims 1-28, claims 1, 8, 14, 21, 27, and 28 are independent. Independent claims 1, 8, 14, 27, and 28 are device claims and independent claim 21 is a method claim. Every claim is directed to connecting a first rod to a second rod. This is a different problem being addressed than disclosed in the Taylor reference. Like Simonson, Taylor is directed to securing a rod with a fixation device (a vertebral anchor). This is not the same as connecting two *rods*. As discussed above a rod is not the same as a fixation device such as a vertebral anchor. A vertebral anchor is used to secure the rod to the spine. Taylor is directed to a means for securing a rod using a vertebral anchor. There is no discussion in Taylor of

connecting a first *rod* to a second *rod*. As such, there is no disclosure of second bore hole for receiving a portion of the second rod as set forth in the independent claims. Therefore, Taylor fails to disclose each and every element of claims 1, 8, 14, 21, 27, and 28.

Claims 2-7, 9-13, 15-20, 22-26 depend either directly or indirectly from claims 1, 8, 14, and 21 respectively and as such incorporate each and every element of claims 1, 8, 14, and 21. As set forth above, Taylor fails to disclose each and every element of claims 1, 8, 14, and 21. Therefore Taylor fails to disclose each and every element of claims 2-7, 9-13, 15-20, 22-26.

In light of the foregoing amendments and remarks, Applicants respectfully submit that claims 1-28 are now allowable. Applicants therefore request the Examiner withdraw the rejections of claims 1-28 under 35 U.S.C. §102(e) and pass the claims to allowance.

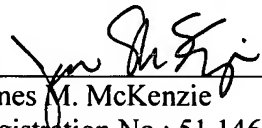
CONCLUSION

In view of the remarks set forth above, Applicant contends each of the presently pending claims in this application is in immediate condition for allowance. Accordingly, Applicant respectfully requests the Examiner to pass the claims to allowance.

If the Examiner deems there are any remaining issues, we invite the Examiner to call the Applicant's Attorney at the telephone number identified below.

Dated: February 16, 2006

Respectfully submitted,
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